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Paper No. 8

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**OCT 02 2001**

**OFFICE OF PETITIONS**

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SUITE 500  
SAN DIEGO, CA 92122

In re Application of  
Castiel, et al.  
Application No. 09/658,215  
Filed: September 8, 2000  
Attorney Docket No. 10636/005001  
For: FIXED SATELLITE CONSTELLATION  
SYSTEM EMPLOYING NON-GEOSTATIONARY  
SATELLITES IN SUB-GEOSYNCHRONOUS  
ELLIPTICAL ORBITS WITH COMMON  
GROUND TRACKS

DECISION REFUSING STATUS  
UNDER 37 CFR 1.47(a)

This is in response to the renewed petition, filed September 20, 2001 under 37 CFR 1.47(a).

The petition is **DISMISSED**.

Rule 47 applicant is given ONE MONTH from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed September 8, 2000 without an executed oath or declaration and named David Castiel, Jack Anderson, and John E. Draim as joint inventors.

Accordingly, on October 27, 2000, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, and a surcharge for its late filing, along with the required filing fees due in connection with the application. In response, a petition under 37 CFR 1.47(a) was filed on March 6, 2001 and dismissed July 9, 2001.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 USC 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition lacks item (1) referenced above. The petition lacks any supporting evidence that the non-signing inventor cannot be reached, was ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers, refused to

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sign the oath or declaration. Proof of the pertinent events should be made by someone having first hand knowledge of the events in the form of an affidavit or declaration. In particular, the declaration or affidavit must set forth the manner in which the application papers were presented to the non-signing inventor. Petitioner should include copies of dated cover letters and/or mailing receipts as evidence that the non-signing inventor was presented with a copy of the application papers or having been presented with the application papers, refused to sign the oath or declaration. If oral refusals were made by the non-signing inventor, that fact along with the time and place of the refusal must be stated in an affidavit or declaration signed by the person to whom the refusals were made. Petitioner's attention is directed to MPEP 409.03(d) for further information on the presumptive evidence required for accordance of status under 37 CFR 1.47.

Petitioner has failed to present any evidence to establish that the non-signing inventor ever received a copy of the application papers (specification, claims, and drawings). The letter dated August 28, 2001 and addressed to the non-signing inventor indicates that the non-signing inventor was presented with a combined declaration and power of attorney and an assignment.

Any renewed petition must be accompanied by evidence that the non-signing inventor has been presented with a copy of the application papers (specification, claims, and drawings).


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23  
2201 S. Clark Place  
Arlington, VA

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

  
Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy